

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

LARRY J. LEE,

Petitioner,

v.

JASON BENNETT,

Respondent.

Case No. C24-5523-JNW-SKV

REPORT AND RECOMMENDATION

I. INTRODUCTION

Petitioner Larry J. Lee is a Washington state prisoner who is currently confined at the Stafford Creek Corrections Center in Aberdeen, Washington. Dkt. 5 at 2. His confinement is pursuant to a judgment and sentence entered in Pierce County Superior Court case number 15-1-02250-6. *Id.* at 2. Petitioner filed a petition for writ of habeas corpus under 28 U.S.C. § 2241 in which he contends that the trial court violated his Fourteenth Amendment right to due process by failing to apply a retroactive sentencing statute, RCW 9.94A.760 (2023), to his sentence. *Id.* at 3-7.

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1 II. DISCUSSION

2 The Ninth Circuit has held that “28 U.S.C. § 2254 is the exclusive vehicle for a habeas  
3 petition by a state prisoner in custody pursuant to a state court judgment.” *White v. Lambert*, 370  
4 F.3d 1002, 1009-10 (9th Cir. 2004), *overruled on other grounds by Hayward v. Marshall*, 603  
5 F.3d 546 (9th Cir. 2010) (en banc). Because Petitioner submitted his petition pursuant to § 2241,  
6 and not § 2254, the Court entered an Order on July 30, 2024, in which it declined to serve the  
7 petition or to direct that an answer be filed. Dkt. 6. The Court granted Petitioner leave to correct  
8 this deficiency by submitting an amended petition pursuant to § 2254 within 30 days of the date  
9 the Order was entered. *Id.* The Court noted in the Order that if no amended petition was timely  
10 filed, or if Plaintiff filed an amended petition that was not pursuant to § 2254, the Court would  
11 recommend this matter be dismissed.

12 On August 8, 2024, a notice of appeal to the Ninth Circuit was entered on the docket in  
13 this matter. Dkt. 7. On August 30, 2024, an Order from the Ninth Circuit was entered,  
14 dismissing the appeal. Dkt. 9. To date, Plaintiff has not submitted an amended petition or  
15 otherwise responded to the Court’s Order.

16 III. CERTIFICATE OF APPEALABILITY

17 A petitioner seeking post-conviction relief from a state court judgment may appeal a  
18 district court’s dismissal of his federal habeas petition only after obtaining a certificate of  
19 appealability from a district or circuit judge. 28 U.S.C. § 2253(c)(2). A certificate of  
20 appealability may issue only where a petitioner has made “a substantial showing of the denial of  
21 a constitutional right.” *Id.* A petitioner may satisfy this standard “by demonstrating that jurists  
22 of reason could disagree with the district court’s resolution of his constitutional claims or that  
23 jurists could conclude the issues presented are adequate to deserve encouragement to proceed

1 further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Under this standard, the Court should  
2 find that Petitioner is not entitled to a certificate of appealability in this matter.

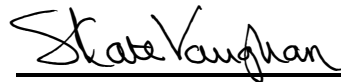
3 IV. CONCLUSION

4 Because Plaintiff failed to respond to the Court’s Order directing him to submit an  
5 amended petition and because habeas relief is not available to Petitioner under § 2241, the Court  
6 recommends the proposed petition, Dkt. 5, be DISMISSED without prejudice. A certificate of  
7 appealability should be DENIED. A proposed Order accompanies this Report and  
8 Recommendation.

9 V. OBJECTIONS

10 Objections to this Report and Recommendation, if any, should be filed with the Clerk and  
11 served upon all parties to this suit not later than **fourteen (14) days** from the date on which this  
12 Report and Recommendation is signed. Failure to file objections within the specified time may  
13 affect your right to appeal. Objections should be noted for consideration on the District Judge’s  
14 motions calendar **fourteen (14) days** from the date they are filed. Responses to objections may  
15 be filed by **the day before the noting date**. If no timely objections are filed, the matter will be  
16 ready for consideration by the District Judge on **October 7, 2024**.

17 Dated this 16th day of September, 2024.

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19 S. KATE VAUGHAN  
20 United States Magistrate Judge  
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